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BASCH & NICKERSON LLP
1777 PENFIELD RD
PENFIELD NY 14526

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OFFICE OF PETITIONS

In re Application	:
Weiner, et al.	:
Application No. 10/077,958	: DECISION ON APPLICATION
Filed: February 19, 2002	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. BTI-22	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR § 1.705)," filed June 17, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred ninety-nine (399) days to four hundred twelve (412) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **four hundred twelve (412) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 4, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is three hundred ninety-nine (399) days. On June 17, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is four hundred twelve (412) days.

Applicants assert entitlement to a patent term adjustment of four hundred twelve (412) days on the basis that the PTO improperly assessed Applicants a delay of thirteen (13) days for responding to a Notice to File Missing Parts mailed on March 14, 2002. Applicants assert that on June 5, 2002 they timely filed a response within the three month period pursuant to 37 C.F.R. 1.704(b).

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of three hundred ninety-nine (399) days based on an adjustment for PTO delay of four hundred twelve (412) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicants' delays of thirteen (13) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The adjustment of thirteen (13) days is at issue.

The adjustment of thirteen (13) days has been found to be incorrect. Applicants have submitted a copy of a postcard receipt for the instant application, itemizing a declaration, substitute drawings, and the proper fees, and bearing a USPTO date stamp of June 5, 2002. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² Accordingly, it is concluded that Applicants filed a complete reply in response to the March 14, 2002 Notice to File Missing Parts on June 5, 2002, and therefore should not have been assessed a delay of thirteen (13) days.

In view thereof, the correct determination of patent term

¹ Applicants filed the application for patent term adjustment prior to the filing of the issue fee.

² MPEP 503.

adjustment at the time of the mailing of the Notice of Allowance is **four hundred twelve (412)** (412 days of PTO delay and 0 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen